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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable G.D. Morgan, Jr.

Anthony Beasley, Individually and on behalf of the minor child, LB born 2014, Appellant,

South Carolina Department of Social Services, South Carolina Department of Children Advocacy, Children's Advocacy Center of Spartanburg, Cherokee and Union Counties, Inc., Defendants,

Of which South Carolina Department of Social Services, South Carolina Department of Children Advocacy are the Respondents.

Appellate Case No. 2024-000200

Initial brief of Appellant

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STATEMENT OF ISSUES ON APPEAL

I. The trial court erred in finding that the cause of outrage is barred by the South Carolina Tort Claims Act.

II. The trial court erred in finding that the SCTCA does not allow recovery for punitive damages.

<u>STATEMENT OF THE CASE</u>

Appellant filed and served a Complaint for damages demanding a jury trial. He alleged several causes of action. SCDSS filed a motion to dismiss. The trial court upheld all of Appellant's causes of actions except three (Appellant only appeals two). The trial court found that simple negligence is not actionable. Appellant does not appeal this ruling. The trial court found that outrage is not a cause of action under the Torts Act. Appellant appeals this ruling. The trial court found punitive damages are not allowed under the Torts Act. Appellant appeals this ruling.

STANDARD OF REVIEW

"The character of an action as legal or equitable depends on the relief sought." *First Union Nat'l Bank of S.C. v Soden*, 333 S.C. 554, 574, 511 S.E.2d 372, 382 (Ct. App. 1998); *see also Longshore v Saber Sec. Servs. Inc.,* 365 S.C. 554, 560, 619 S.E.2d 5, 9 (Ct. App. 2005) ("An action in tort for damages is an action at law.") Questions of law are decided *de novo*, and the appellate court "is free to decide [them] with no particular deference to the trial court." *Osmundson v School District 5 of Lexington and Richland Counties*, Opinion No. 6066 (Ct. App. June 26, 2024) citing *Proctor v Steedley*, 398 S.C. 561, 730 S.E.2d 357 (Ct. App. 2012).

ARGUMENT

I. The trial court erred in finding that the cause of outrage is barred by the South Carolina Tort Claims Act.

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Appellant's complaint alleges the reckless infliction of emotional distress by the State of South Carolina. DSS filed a motion with trial court alleging the following reasons why the action should be dismissed: "Plaintiff's claim against Defendant SCDSS for outrage is barred by the South Carolian Tort Claims Act, S.C. Code Ann. § 15-78-10, *et. seq*. and must be dismissed as a matter of law."[1]

Intentional infliction of emotional distress also known as outrage, is not excluded under the SCTCA. At trial, Appellant, will establish the requisite elements to prove the cause of action. In a claim for the tort of outrage, a plaintiff must show: (1) that a defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct; (2) that the conduct was so outrageous that it exceeded all possible bounds of decency and so atrocious as to be utterly intolerable in a civilized community; (3) that such actions actually caused plaintiff's emotional distress; and (4) that the emotional distress was so severe that no reasonable man could be expected to endure it. *ALG Holdings LLC v Dunn*, 2011 WL 794855, 5 (Ct. App. 2011); citing *Hanson v Scalise Builders of S.C*. 374 S.C. 352 650 S.E.2d 68 (2007); *Upchurch v New York Times Co*., 314 S.C. 531, 431 S.E.2d 558 (1993); *Wright v Sparrow*, 298 S.C. 469, 381 S.E.2d 503 (Ct. App. 1989). The SCTCA only excludes intentional conduct, not reckless conduct. Because outrage can be based on reckless conduct, it is a viable cause of action against a governmental entity.

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[1] Motion to Dismiss of SCDSS p. 2, ¶ 4.

S.C. Code Ann. § 15-78-30 (f) of the SCTCA provides:

> “Loss” means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the *intentional* infliction of emotional harm. (Emphasis added).

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Hodges v Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000). (citing *Charleston County Sch. Dist. v. State Budget and Control Bd*., 313 S.C. 1, 437 S.E.2d 6 (1993)). If a statute’s language is plain and unambiguous, and expresses clear and definite meaning, courts must not look for or impose alternate meaning. *State v Morgan*, 352 S.C. 359, 574 S.E.2d 203 (2002), (citing *Paschal v State Election Comm’n*., 317 S.C. 434, 454 S.E.2d 890 (1995)). The language of S.C. Code Ann. § 15-78-30 (f) enunciates that the intentional infliction of emotional harm is not a recoverable loss under the SCTCA. The statute says nothing about the *reckless* infliction of emotional harm.

S.C. Code Ann. § 15-78-60, entitled “Exceptions to waiver of immunity,” sets forth an exhaustive list of waiver of immunity exceptions under the SCTCA. Neither outrage nor the reckless infliction of emotional distress are included in this list. A statute as a whole must “receive practical, reasonable, and fair interpretation consonant with the purpose, design and policy of lawmakers.” *Morgan*, 352 S.C. at 367, 574 S.E.2d at 207 (citing *City of Camden v Brassell*, 326 S.C. 556, 486 S.E.2d 492 (Ct. App. 1997)). Any ambiguity in the statute should be resolved in favor of a just, equitable and beneficial operation of the law. *Id*. at 367. Each word must be given its plain and common meaning without resorting to a forced construction that stretches the statute’s function. *Id.* at 366. S.C. Code Ann. § 15-78-60 clearly explains and defines forty exceptions to the immunity waiver. The statute does not reference outrage, or the reckless infliction of emotional harm. See generally *Bass v S.C. Dep’t of Soc. Servs* , 414 S.C. 558, 574-578, 780 S.E.2d 252

(2015). Asserting that the tort of outrage is specifically excluded as a loss under the SCTCA and *must be dismissed as a matter of law* grossly misinterprets legislative intent and case law.

The SCTCA is the exclusive civil remedy available for any tort committed by a governmental entity, its employers, or its agents, as long as they are acting within the scope of their official duties and have not engaged in intentional conduct. When the General Assembly created the SCTCA, it did so with two balancing principles in mind: the government is not absolutely immune from liability for its actions, but it cannot be subjected to unlimited liability. S.C. Code Ann. § 15-78-20 (a). The SCTCA is not an absolute bar to governmental liability. It is prescribed to create a fair and equitable forum through which grievances such as Appellant's may be redressed. As the *Bass* court found, allowing for the recovery of the reckless infliction of emotional harm under the SCTCA maintains this balance.

Whether the government's actions is intentional or reckless is the key distinction. Intentional acts are excluded under the SCTCA. Reckless acts are not. Appellant's complaint alleges:

> "That the removal of the Plaintiff's child, from his life entirely, without a proper investigation, or even supervised visitations, recklessly inflicted emotional distress onto the Plaintiff. The Defendant's conduct was extreme and outrageous and exceeded all bounds of decency in that the Defendant recklessly exercised its authority over the Plaintiff and his minor child." [2]

Therefore, under the SCTCA and current case law the outrage claim was properly plead and the judge erred in dismissing it as a matter of law.

[2] Complaint filed October 4, 2023, p. 7, ¶¶ 35, 36.

II. The trial court erred in finding that the SCTCA does not allow recovery for punitive damages.

The *Bass* trial jury returned a verdict of four-million dollars ($4,000,000.00) in damages. See the Jury Verdict form: Bass v SCDSS, Case No. 2009-CP-20-0395 at ROA ___. "The trial court granted DSS's motion to reduce the verdict to $600,000.00." *Bass v S.C. Dep't of Soc. Servs.,* 403 S.C. 184, 742 S.E.2d 667 (Ct. App. 2013). On appeal to our Supreme Court, it "reinstate[d] the verdict subject to the trial court's reduction of the award in accordance with the TCA's limitations on damages." *Bass v S.C. Dep't of Soc. Servs* , 414 S.C. 558, 576, 780 S.E.2d 252 (2015) (fn.11). Therefore, the trial court erred in finding that punitive damages are excluded by the SCTCA.

CONCLUSION

SCDSS recklessly inflicted emotional distress upon your Appellant. He properly plead the claims for relief. The trial court erred as matter of law in dismissing them by finding the SCTCA does not allow for such claims. That is simply not the law in this State. Accordingly, Appellant respectfully requests the trial court's ruling be reversed.

Respectfully submitted,

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This 10th day of July, 2024.